



Tax Reduction Letter

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Private Letter Ruling 8350084

This is in reply to your letter of February 8, 1983, and prior correspondence submitted on your behalf by your authorized representatives requesting rulings regarding the sale of your home pursuant to sections 1034 and 1239 of the Internal Revenue Code.

The information submitted indicates that Taxpayers purchased a new residence in December 1981, and they have unsuccessfully attempted to sell their old residence. They now propose to sell the old residence to Corporation which is wholly owned by Taxpayer-husband. The property will be depreciable property in the hands of the Corporation.

The purchase price of the new residence was a dollars. The basis in your old residence is b dollars. You propose to sell the old residence to the Corporation for c dollars.

Section 1034(a) of the Code provides that if property ("old residence") used by the taxpayer as a principal residence is sold by the taxpayer and within a period beginning 2 years after such date, property (in this section called "new residence") is purchased and used by the taxpayer as his principal residence, gain (if any) from such sale shall be recognized only to the extent that the taxpayer's adjusted sales price of the old residence exceeds the taxpayer's cost of purchasing a new home.

Section 1.1034-1(a) of the Income Tax Regulations provides, in part, that the provisions of section 1034 are mandatory, so that the taxpayer cannot elect to have gain recognized under circumstances where this section is applicable.

Section 1239 of the Code provides that in the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

The term "related persons" means, in part, a person and all entities which are 80 percent owned entities with respect to such person. The term "80-percent owned entity" includes, with respect to any person, a corporation 80 percent or more in value of the outstanding stock of which is owned (directly or indirectly) by or for such person.

If a taxpayer realizes gain on the sale of his old principal residence, the gain is not recognized or taxed if he buys a new principal residence within a specified period at a cost that equals or exceeds the sales price of the old principal residence. This nonrecognition is mandatory.

There are no specific requirements under section 1034 regarding the manner of the sale. In other words there are no prohibitions against a sale between related parties. As long as the requirements of section 1034 are met and gain is recognized, the seller may defer the gain upon

the purchase of a replacement residence. Thus section 1239 would not apply to the sale of your home to your wholly owned corporation.

According we conclude that section 1034 would govern the above sale of your home to Corporation provided that both the "old residence" and "new residence" qualify as your principal residences. No gain would be recognized to you provided the sale met all of the qualifications of section 1034 of the Code.

However, if the new residence is later sold and gain recognized, that gain will be recognized as ordinary income to the extent of the gain that would have been ordinary income were it not deferred upon this sale under section 1034 of the Code.

No opinion is expressed as to the federal income tax consequences of the proposed transaction under the provisions of any other section of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Richard Manfreda

Chief, Individual Income Tax Branch